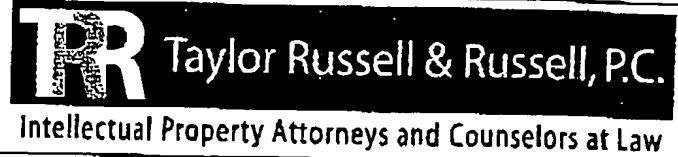


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Fax

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RECEIVED

5 NOV 2004

To: MS PCT LEGAL
Commissioner for Patents

From: Douglas D. Russell

Fax: 571-273-0459

Date: 11/5/2004

Legal Staff
International Division

Re: Request for Reconsideration on Petition to **Pages:** 8, including this cover sheet
Convert
U.S. Application No. 10/708,471
Applicant: HENDERSON
Filing Date: 05 March 2004
Attorney Docket No. 800769
Title: RESILIENT ELASTOMERIC
STRUCTURE

10/708,471

Office of PCT Legal Administration
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

In re Application of)	
Henderson, Timothy David Robert)	
U.S. Application No.: 10/708,471)	
Filing Date: 05 March 2004)	REQUEST FOR
Attorney Docket No. 800769)	RECONSIDERATION ON
Title: Resilient Elastomeric Structure)	PETITION TO CONVERT

This request for reconsideration on the merits is in response to the decision to dismiss the present petition for lack of showing of sufficient cause. This request is based on 1) the arbitrary decision by the Office to disregard the evidence presented and 2) the resultant loss of petitioner's patent rights that will result therefrom, where no other remedy is available.

Regarding the arbitrary decision by the Office to disregard the evidence presented in the petition to convert, petitioner presented evidence to show that the continuity data screen, shown in Exhibit A, would allow a PCT National Stage application to be filed electronically in the Electronically Filing System (EFS) under 35 U.S.C. § 371. A subsequent telephone call by petitioner to the USPTO Electronic Business Center resulted in a confirmation that, indeed, a PCT National Stage application filed electronically in the EFS would be received and treated as a PCT National Stage application under 35 U.S.C. § 371. The EFS Frequently Asked Question cited in the Decision on Petition to Convert was not apparent to petitioner at the time of filing on March 5, 2004. Furthermore, it is not clear that the cited Frequently Asked Question was even available at that time, or if it was available, whether it had been superceded by more recent information available directly from the personnel in the USPTO Electronic Business Center. And, even if petitioner had viewed the cited Frequently Asked Question, upon questioning the check box shown in Exhibit A and the confirmation of the ability to electronically file a PCT National Stage application under 35 U.S.C. § 371 by the Electronic Business personnel, the action taken by petitioner would have been the same as was taken.

Regarding the resultant loss of petitioner's patent rights that will result therefrom, petitioner's patent application under 35 U.S.C. § 111(a) has a filing date of March 5, 2004, as shown in Exhibit B, which is a copy of the Filing Receipt for petitioner's patent application. Petitioner has not received the benefit of claiming the priority date to the parent priority application number 0121655.5 filed in the United Kingdom on September 7, 2001, and the subsequently filed PCT application. Exhibit C is a copy of the Application Data Sheet electronically filed in the EFS. Without a claim of continuation to the intervening PCT application, the time period between the filing of the parent application in the United Kingdom and the child application in the United States is greater than 12 months, which would result in a loss of patent rights in the United States. Alternatively, a patent application filed by another during the intervening time between

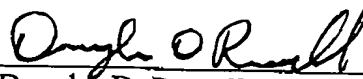
10/708,471

the filing of the parent and child application may also result in a loss of petitioner's patent rights.

Accordingly, petitioner requests reconsideration on the Petition to Convert based on a loss of patent rights.

Respectfully Submitted,

Date: November 5, 2004

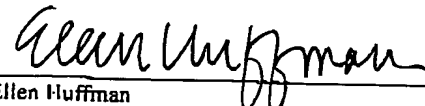


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Certificate of Transmission or Mailing

I hereby certify that the correspondence attached hereto is being facsimile transmitted to number 571-273-0459, or deposited with the US Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10, Express Mail Label No. _____, addressed to Mail Stop PCT Legal, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below:

Nov 5, 2004
Date


Ellen Huffman

Best Available Copy

USPTO ePAVE 5.1 - New utility / Application Data Sheet / Continuity data

Summary Data

Checklist:

- ☒ Add common data elements
- ☒ Attach files to the project
- ☒ Validate the project
- ☒ Submit to USPTO
- ☒ Obtain acknowledgement receipt

New utility

- ☒ Application Data Sheet
 - ☒ Correspondence address
 - ☒ Inventor
 - ☒ Attorney information
 - ☒ Foreign priority claims
 - ☒ Publication information
 - ☒ Publication assignee information
 - ☒ Preview (Application Data Sheet)
- ☒ Declaration
 - ☒ Preview (Declaration)
- ☒ Power of attorney
 - ☒ Preview (Power of attorney)
- ☒ Assignment
 - ☒ Preview (Assignment)
- ☒ Information disclosure statement
 - ☒ Preview (IDS)
- ☒ Fee Transmittal
 - ☒ Fee calculation
 - ☒ Method of payment
 - ☒ Preview (Fee transmittal)

Application Data Sheet

Inventor

Attorney information

Foreign priority claims

Publication information

Publication assignee information

Preview (Application Data Sheet)

Declaration

Preview (Declaration)

Power of attorney

Preview (Power of attorney)

Assignment

Preview (Assignment)

Information disclosure statement

Preview (IDS)

Fee Transmittal

Fee calculation

Method of payment

Preview (Fee transmittal)

UNITED STATES OF AMERICA [US]

2004-11-04

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FILE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/708,471	03/05/2004	3712	611	800769	5	28	3

23372
TAYLOR RUSSELL & RUSSELL, P.C.
4807 SPICEWOOD SPRINGS ROAD
BUILDING TWO SUITE 250
AUSTIN, TX 78759

TAYLOR RUSSELL
JUN 07 2004
& RUSSELL, P.C.

CONFIRMATION NO. 2470

FILING RECEIPT



OC000000012869923

Date Mailed: 06/04/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Timothy David Robert Henderson, North Wales, UNITED KINGDOM;

Domestic Priority data as claimed by applicant

Foreign Applications

UNITED KINGDOM 0121655.5 09/07/2001

If Required, Foreign Filing License Granted: 05/28/2004

Projected Publication Date: 09/09/2004

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

Resilient Elastomeric Structure

EXHIBIT B

Preliminary Class

APPLICATION DATA SHEET

Electronic Version v14

Stylesheet Version v14.0

Title of
Invention

Resilient Elastomeric Structure

Application Type: regular, utility

Attorney Docket Number: 800769

Correspondence address:

Customer Number:

23372

23372

Continuing Data:

This is a National Stage of GB application number PCT/GB02/04050, filed 2002-09-06 ,
now pending.

Priority Data:

Doc.No: 0121655.5; Country - GB; Date: 2001-09-07 us-priority-claimed

Inventor Information:

Inventor 1:

Applicant Authority Type: Inventor

Citizenship: GB

Name prefix: Mr.

Given Name: Timothy

Middle Name: David Robert

Family Name: Henderson

City of Residence: North Wales

Country of Residence: GB

Address-1 of Mailing Address: 26 Llanrhydd St.

EXHIBIT C



14 SEP 2004
UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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23372
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4807 Spicewood Springs Road
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Austin, TX 78759

TAYLOR RUSSELL
SEP 20 2004
GTS/TPR
& RUSSELL, P.C.

In re Application of
HENDERSON, Timothy David Robert
U.S. Application No.: 10/708,471
Filing Date: 05 March 2004
Attorney Docket No.: 800769
For: RESILIENT ELASTOMERIC
STRUCTURE

**DECISION
ON PETITION
TO CONVERT**

This decision is in response to applicants' "Petition to Treat Application as filed Under 35 U.S.C. 371" filed on 09 June 2004 which is treated as a request to convert the above-captioned application to a national stage application of PCT/GB02/04050 pursuant to 35 U.S.C. 371. The \$130.00 fee has been charged to petitioner's credit card as authorized.

A review of the above-captioned application file verifies that it was properly processed under 35 U.S.C. 111(a). Applicant filed the above-captioned application using the Electronic Filing System (EFS) on 05 March 2004. A national stage filing under 35 U.S.C. 371 using the EFS is not allowed at this time.¹ Accordingly, the application was properly processed as a filing under 35 U.S.C. 111(a).

Nonetheless, applicant's petition to convert the application to a national stage filing will be considered. U.S. Statutes and Regulations do not make specific provision for the requested action and as such the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause (e.g., the loss of patent rights) where no other remedy is available.

In the present petition, applicants have not made a showing that a loss of patent rights would occur if the above-captioned application is a filing under 35 U.S.C. § 111(a).

¹ See Electronic Filing System - Frequently Asked Questions (FAQs)
(<http://www.uspto.gov/ebs/efs/faq/whattype.htm#eight>)

May I electronically file an International application under 35 U.S.C. 371 National stage?

At this time EFS does not provide all the capabilities needed to author, submit and initially process electronic documents and attachments required for a complete 35 U.S.C. 371 National stage filing . . .

~~U.S. Application No. 10/226,295~~

Page 2

According, the present petition is **DISMISSED** for lack of showing of sufficient cause.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. No additional petition fee is required.

This application is being forwarded to OIPE for further processing under 35 U.S.C. 111(a).



James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-645;
(571) 273-3302 (after 30 September 2004)